

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ASHAUNTI QUANTAY PROWELL,

Civil No. 09-2409 (JRT/JJK)

Plaintiff,

v.

ANOKA COUNTY, MINNESOTA;
JULIE ____; DR. RICHARD ALPER;
JOHN DOE DAR; DIANE LINNGREN;
PAM ____; DA; PK; A. ANDERSON; LT.
HENDRICKSON; MERCY HOSPITAL;
ALLINA HOSPITALS & CLINICS; DR.
ANDREW SCHOCK; MICHELLE ____;
DENISE KAEHLER; TERESA MEYER;
TORE DELTIE; YASER EL-
HAMMAMY; DANIEL C. RANDA;
JEFFREY J. ROBERG; MARTIN
ZADNIK; DR. ROACH; LINDA LOKEN;
KAREN LANE; CHERYL ALBERTS; and
DIANE GRINDE,

**ORDER REJECTING REPORT AND
RECOMMENDATION OF THE
MAGISTRATE JUDGE**

Defendants.

Ashaunti Quantay Prowell, Fed. Reg. 10819-041, FCC Terre Haute, P.O.
Box 33, Terre Haute, Indiana 47808, plaintiff *pro se*.

This matter is before the Court on the objections of plaintiff Ashaunti Quantay Prowell to a Report and Recommendation issued by United States Magistrate Judge Jeffrey J. Keyes on October 13, 2009. After a *de novo* review of those objections, *see* 28 U.S.C. § 636(b)(1); D. Minn. Local Rule 72.2(b), the Court rejects the Report and Recommendation for the reasons set forth below.

On September 11, 2009, the Magistrate Judge issued an Order directing Prowell to comply with 28 U.S.C. § 1915(b), which governs prisoner applications for leave to proceed *in forma pauperis*. (Docket No. 3.) Specifically, the Order directed Prowell to pay an initial partial filing fee of not less than \$38.53, calculated based on Prowell's inmate trust account and the statutory formula in § 1915(b)(1). (*Id.* at 3.) The Order stated that if Prowell "pays his initial partial filing fee within twenty (20) days after the date of this order, the case will then go forward, and Plaintiff's complaint will then be 'screened' pursuant to 28 U.S.C. § 1915A. (*Id.* at 3-4.) The Order added that if Prowell fails to pay the initial partial filing fee within twenty days, "it will be recommended that the action be dismissed without prejudice." (*Id.* at 4.)

On October 13, 2009, the Magistrate Judge issued a Report and Recommendation that Prowell's application for leave to proceed *in forma pauperis* be denied and that the action be dismissed without prejudice. (Docket No. 4.) The Magistrate Judge concluded that Prowell had "abandoned this action" because he "has not tendered the payment due, nor has he offered any excuse for his failure to do so." (*Id.* at 2.)

In his objection to the Report and Recommendation, Prowell stated that he paid his initial partial filing fee of \$38.53 on September 28, 2009. (Docket No. 5 at 2.) He attached a copy of the receipt for that payment. (*Id.* at 3.) The docket confirms that a receipt in the amount of \$38.53 was issued to Prowell on September 28, 2009. (Docket No. 6.) The docket also includes a Notice of Docketing Correction on November 3, 2009, stating that the "[r]eceipt for payment made on 09/28/2009 in the amount of \$38.53

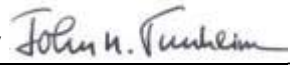
was not docketed until 11/03/2009 by the Clerk's Office. The Clerk's Office unintentionally failed to docket the receipt on 09/28/2009."

The Court finds that Prowell complied with the Magistrate Judge's Order of September 11, 2009, by paying the initial partial filing fee of no less than \$38.53 within twenty days after the date of that Order. Accordingly, the Court rejects the Magistrate Judge's Report and Recommendation.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, the Court **SUSTAINS** plaintiff's objections [Docket No. 5] and **REJECTS** the Report and Recommendation of the Magistrate Judge dated October 13, 2009 [Docket No. 4]. The matter is **REFERRED** to the Magistrate Judge for further screening.

DATED: November 13, 2009
at Minneapolis, Minnesota.

s/ 

JOHN R. TUNHEIM
United States District Judge